

## **Q&As on the Bureau of Industry and Security's China Policy Rule**

### **General**

**Question:** What changes does the final rule make to the July 6, 2006 proposed rule?

**Answer:**

- The final China Policy Rule (*Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New Authorization Validated End-User; Revision of Import Certificate and PRC End-User Statement Requirement (AD-75)*) makes the following broad changes to the proposed rule published July 6, 2006. Specifically, the final rule:
  - Reduces the list Export Control Classification Numbers (ECCNs) subject to military end-use control from 47 to 31, based on military applicability, foreign availability, and commercial impact. This list of 31 ECCNs covers about 20 distinct product groups, and associated software and technology.
  - Clarifies the Validated End User Program (VEU) by establishing simpler procedures for applying for VEU authorization and creating an inter-agency committee to decide on requests.
  - Broadens the scope of items that may be denied for making a “direct and significant” contribution to the PRC’s military capabilities. Specifically, it revises the license application review policy for items controlled for national security reasons to provide a presumption of denial for license applications to export, reexport, or transfer items that would make a direct and significant contribution to the PRC’s military capabilities. The rule also allows BIS to review license applications involving items controlled for chemical/biological, missile technology, and nuclear nonproliferation reasons to determine if they make such a contribution.
  - Revises definition of “military end-use” to be similar to one already in regulations and understood by exporters.
  - Reduces potential paperwork burden by raising the dollar threshold for U.S. exporters to obtain Ministry of Commerce (MOFCOM) End-User Statements from \$5,000 to \$50,000.

### **Military End Use Control**

**Question:** How many products in the final rule are covered by the “military end-use” control?

**Answer:**

- The “military end-use” control covers 20 distinct products and associated technologies, as described in the entries of 31 full or partial ECCNs.

- The ECCNs covered by the “military end-use” control in the final rule are set forth in Supplement No. 2 to part 744 of the EAR. They are:

### **(1) Category 1 – Materials, Chemicals, Microorganisms, and Toxins**

- (i) 1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U-235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.
- (ii) 1C990 Limited to fibrous and filamentary materials other than glass, aramid or polyethylene not controlled by 1C010 or 1C210, for use in "composite" structures and with a specific modulus of  $3.18 \times 10^6$  m or greater and a specific tensile strength of  $7.62 \times 10^4$  m or greater.
- (iii) 1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the characteristics in the List of Items Controlled.
- (iv) 1D993 “Software” specially designed for the “development”, “production”, or “use” of equipment or materials controlled by 1C210.b, or 1C990.
- (v) 1D999 Limited to specific software controlled by 1D999.b for equipment controlled by 1B999.e that is specially designed for the production of prepreps controlled in Category 1, n.e.s.
- (vi) 1E994 Limited to "technology" for the "development", "production", or "use" of fibrous and filamentary materials other than glass, aramid or polyethylene controlled by 1C990.

### **(2) Category 2 – Materials Processing**

- (i) 2A991 Limited to bearings and bearing systems not controlled by 2A001 and with operating temperatures above 573 K (300 °C).
- (ii) 2B991 Limited to “numerically-controlled” machine tools having "positioning accuracies", with all compensations available, less (better) than 9  $\mu$ m along any linear axis; and machine tools controlled under 2B991.d.1.a.
- (iii) 2B992 Non-“numerically controlled” machine tools for generating optical quality surfaces, and specially designed components therefor.
- (iv) 2B996 Limited to dimensional inspection or measuring systems or equipment not controlled by 2B006 with measurement uncertainty equal to or less (better) than  $(1.7 + L/1000)$  micrometers in any axes. (L measured Length in mm).

### **(3) Category 3 – Electronics Design, Development and Production**

(i) 3A292.d Limited to digital oscilloscopes and transient recorders, using analog to digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at greater than 2.5 giga-samples per second.

(iii) 3A999.c All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers.

(ii) 3E292 Limited to “technology” according to the General Technology Note for the “development”, “production”, or “use” of -digital oscilloscopes and transient recorders with sampling rates greater than 2.5 giga-samples per second, which are controlled by 3A292.d.

#### **(4) Category 4 - Computers**

(i) 4A994 Limited to computers not controlled by 4A001 or 4A003, with an Adjusted Peak Performance (“APP”) exceeding 0.5 Weighted TeraFLOPS (WT).

(ii) 4D993 “Program” proof and validation “software”, “software” allowing the automatic generation of “source codes”, and operating system “software” not controlled by 4D003 that are specially designed for real time processing equipment.

(iii) 4D994 Limited to “software” specially designed or modified for “development”, “production”, or “use” of equipment controlled by 4A101.

#### **(5) Category 5 – (Part 1) Telecommunications**

(i) 5A991 Limited to telecommunications equipment designed to operate outside the temperature range from 219K (-54 °C) to 397K (124 °C), which is controlled by 5A991.a., radio equipment using Quadrature-amplitude-modulation (QAM) techniques, which is controlled by 5A991.b.7., and phased array antennae, operating above 10.5 Ghz, except landing systems meeting ICAO standards (MLS), which is controlled by 5A991.f.

(ii) 5D991 Limited to “software” specially designed or modified for the “development”, “production, or “use” of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f., or of “software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f.

(v) 5E991 5E991 Limited to “technology” for the “development”, “production” or “use” of equipment controlled by 5A991.a., 5A991.b.7., or 5A991.f., or of “software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f.

#### **(6) Category 6 – Sensors and Lasers**

(i) 6A995 “Lasers”, not controlled by 6A005 or 6A205.

(ii) 6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a “beat length” of less than 500 mm (high birefringence) or optical

sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by ‘mole fraction.’

**(7) Category 7 – Navigation and Avionics**

- (i) 7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.
- (ii) 7B994 Other equipment for the test, inspection, or “production” of navigation and avionics equipment.
- (iii) 7D994 “Software”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication and other avionics.
- (iv) 7E994 “Technology”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication, and other avionics equipment.

**(8) Category 8 - Marine**

- (i) 8A992 Limited to underwater systems or equipment, not controlled by 8A001, 8A002, or 8A018, and specially designed parts therefor.
- (ii) 8D992 “Software” specially designed or modified for the “development”, “production” or “use” of equipment controlled by 8A992.
- (iii) 8E992 “Technology” for the “development”, “production” or “use” of equipment controlled by 8A992.

**(9) Category 9 – Propulsion Systems, Space Vehicles and Related Equipment**

- (i) 9A991 Limited to “aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101, n.e.s.
- (ii) 9D991 “Software”, for the “development” or “production” of equipment controlled by 9A991 or 9B991.
- (iii) 9E991 “Technology”, for the “development”, “production” or “use” of equipment controlled by 9A991 or 9B991.

**Question:     How did the Bureau of Industry and Security (BIS) determine which of the 47 items in the proposed rule would be subject to the “military end-use” control in the final rule?**

**Answer:**

- Drawing on the comments received from the public, BIS conducted a structured military and economic impact review, which considered the following factors in determining which

ECCNs would be subject to the military end-use control: (1) the military applicability of each item; (2) the relative foreign availability of each item; and (3) the level of U.S. commercial exports of each item to the PRC.

- Each ECCN was evaluated individually against all three criteria, with no one of the criteria being solely determinative. Greatest weight was given to the military applicability of each item, based on an evaluation of the contribution the ECCN could make to a weapons system or capability if used in a “military end-use” as defined in this rule.
- With regard to foreign availability, indigenous availability within the PRC was given greater weight than evidence of foreign availability from countries that cooperate with the United States in multilateral export control regimes, though all evidence of foreign availability was considered. When BIS found significant evidence of foreign availability and major commercial exports, but limited military applicability, the ECCN was removed from the list. When BIS found limited evidence of foreign availability and significant military applicability, the item remained on the list, even if it was a major commercial export.

**Question: What is the definition of “military end-use” in the final rule?**

**Answer:**

- In this final rule, “military end-use” is defined in section 744.21(f) to mean: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at <http://www.wassenaar.org>); incorporation into items listed under ECCNs ending in “A018” on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR; or for the “use”, “development”, “production”, or deployment of military items described on the USML or the IML, or items listed under ECCNs ending in “A018” on the CCL. “Military end-use” also means “deployment” of items classified under ECCN 9A991 as set forth in Supplement No. 2 to part 744.
- For purposes of the military end-use control, in a new note to section 744.21(f), BIS has provided definitions for “operation,” “installation,” “maintenance,” and “deployment.” These are terms not previously defined in the EAR, and BIS intends such definitions to clarify the scope of the military end-use control.
- This definition of military end use is intended to add additional clarity and specificity in response to concerns that the definition in the proposed rule would be difficult to comply with because it was overly broad and vague.
- The revised definition draws extensively on a definition of military end-use already contained in the general purpose microprocessor definition found in section 744.17.

**Question: What knowledge standard applies to the “military end-use” control in the final rule?**

**Answer:**

- Under the EAR, exporters and reexporters already are responsible for ensuring that they do not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is restricted by part 744 of the EAR.
- The term “knowledge” used throughout part 744 (as defined in section 772.1 of the EAR) encompasses both actual knowledge and reason to know. The existing knowledge standard applies to the “military end-use” control.

### **National Security License Application Review Policy**

**Question: How does the final rule revise license review policy for national security controlled items destined to the PRC?**

**Answer:**

- BIS had proposed revising section 742.4(b)(7) of the EAR to establish a policy of reviewing applications involving items controlled for National Security (NS) reasons that would be exported or reexported to the PRC to determine if the items would make a “material contribution” to the PRC’s military capabilities. This proposal would have changed the review standard in the EAR, in place since 1983, which provided that BIS would conduct an extended review or deny applications to export or reexport items that would make a “direct and significant contribution” to a series of listed PRC military activities.
- Having reviewed public comments, BIS and its interagency partners decided to maintain the “direct and significant” standard for NS items exported or reexported to the PRC and not to adopt a new “material contribution” standard.
- In this final rule, BIS applies this standard to PRC military capabilities, rather than a limited list of military activities.
- To update and better inform exporters of this license review policy, and to add clarity to the term “military capabilities,” BIS added a new Supplement No. 7 to part 742 of the EAR, which provides an illustrative list of weapons systems that could contribute to enhancing PRC military capabilities.

**Question: What are the descriptions of major weapons systems in Supplement No. 7 to part 742?**

**Answer:**

- Supplement No. 7 to part 742 includes the following description of major weapons systems:  
  
(1) Battle Tanks: Tracked or wheeled self-propelled armored fighting vehicles with high cross-country mobility and a high-level of self protection, weighing at least 16.5 metric tons

unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimeters caliber.

(2) Armored Combat Vehicles: Tracked, semi-tracked, or wheeled self-propelled vehicles, with armored protection and cross-country capability, either designed and equipped to transport a squad of four or more infantrymen, or armed with an integral or organic weapon of at least 12.5 millimeters caliber or a missile launcher.

(3) Large-Caliber Artillery Systems: Guns, howitzers, artillery pieces combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a caliber of 75 millimeters and above.

(4) Combat Aircraft: Fixed-wing or variable-geometry wing aircraft designed, equipped, or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons, or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defense or reconnaissance missions. The term “combat aircraft” does not include primary trainer aircraft, unless designed, equipped, or modified as described above.

(5) Attack Helicopters: Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armor, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft that perform specialized reconnaissance or electronic warfare missions.

(6) Warships: Vessels or submarines armed and equipped for military use with a standard displacement of 750 metric tons or above, and those with a standard displacement of less than 750 metric tons that are equipped for launching missiles with a range of at least 25 kilometers or torpedoes with a similar range.

(7) Missiles and Missile Launchers: (a) Guided or unguided rockets, or ballistic, or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometers, and those items that are designed or modified specifically for launching such missiles or rockets, if not covered by systems identified in paragraphs (1) through (6) of this Supplement. For purposes of this rule, systems in this paragraph include remotely piloted vehicles with the characteristics for missiles as defined in this paragraph but do not include ground-to-air missiles, (b) Man-Portable Air-Defense Systems (MANPADS); or (c) Unmanned Aerial Vehicles (UAVs) of any type, including sensors for guidance and control of these systems.

(8) Offensive Space Weapons: Systems or capabilities that can deny freedom of action in space for the United States and its allies or hinder the United States and its allies from denying an adversary the ability to take action in space. This includes systems such as anti-satellite missiles, or other systems designed to defeat or destroy assets in space.

(9) Command, Control, Communications, Computer, Intelligence, Surveillance, and Reconnaissance (C4ISR): Systems that support military commanders in the exercise of

authority and direction over assigned forces across the range of military operations; collect, process, integrate, analyze, evaluate, or interpret information concerning foreign countries or areas; systematically observe aerospace, surface or subsurface areas, places, persons, or things by visual, aural, electronic, photographic, or other means; and obtain, by visual observation or other detection methods, information about the activities and resources of an enemy or potential enemy, or secure data concerning the meteorological, hydrographic, or geographic characteristics of a particular area, including Undersea communications. Also includes sensor technologies.

(10) Precision Guided Munitions (PGMs), including “smart bombs”: Weapons used in precision bombing missions such as specially designed weapons, or bombs fitted with kits to allow them to be guided to their target.

(11) Night vision equipment: Any electro-optical device that is used to detect visible and infrared energy and to provide an image. This includes night vision goggles, forward-looking infrared systems, thermal sights, and low-light level systems that are night vision devices, as well as infrared focal plane array detectors and cameras specifically designed, developed, modified, or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified or configured for military use; second generation and above military image intensification tubes specifically designed, developed, modified, or configured for military use, and infrared, visible and ultraviolet devices specifically designed, developed, modified, or configured for military application.

### **Validated End User Program**

**Question:      How does a company apply for Validated End User (VEU) authorization?**

**Answer:**

- Requests for authorization must be submitted in the form of an advisory opinion request, as described in section 748.3(c)(2), and in accordance with the requirements of section 748.15 (Authorization Validated End-User). Requests for authorization must be submitted to:

The Office of Exporter Services, Bureau of Industry and Security  
U.S. Department of Commerce  
14<sup>th</sup> Street and Pennsylvania Avenue, NW, Room 2705,  
Washington, DC 20230; or to

The Office of Exporter Services, Bureau of Industry and Security  
U.S. Department of Commerce  
P.O. Box 273,  
Washington, DC 20044.

- Mark the package sent to either address “Request for Authorization Validated End-User.”

**Question:      What information does a company need to submit in the VEU authorization request?**



**Answer:**

- As set forth in Supplement No. 8 to part 748, the following information must be included in a VEU authorization request:
  - (1) Name of proposed VEU candidates, including all names under which the candidate conducts business; complete company physical address (simply listing a P.O. box is insufficient); telephone number; fax number; e-mail address; company Web site (if available); and name of individual who should be contacted if BIS has any questions. If the entity submitting the application is different from the prospective validated end-user identified in the application, this information must be submitted for both entities. If the candidate has multiple locations, all physical addresses located in the eligible destination must be listed.
  - (2) Provide an overview of the structure, ownership and business of the prospective validated end-user. Include a description of the entity, including type of business activity, ownership, subsidiaries, and joint-venture projects, as well as an overview of any business activity or corporate relationship that the entity has with either government or military organizations.
  - (3) List the item(s) proposed for VEU authorization approval and their intended end-uses. Include a description of the item(s); the ECCN(s) for all items, classified to the subparagraph level, as appropriate; technical parameters for the items including performance specifications; and end-use description for the items. If BIS has previously classified the item, the Commodity Classification Automated Tracking System (CCATS) number may be provided in lieu of the information listed in the foregoing provisions in this paragraph.
  - (4) Provide the physical address(es) of the location(s) where the item(s) will be used, if this address is different from the address of the prospective validated end-user provided in (a).
  - (5) If the prospective validated end-user plans to reexport or transfer the item, specify the destination to which the items will be reexported or transferred.
  - (6) Specify how the prospective validated end-user's record keeping system will allow compliance with the recordkeeping requirements set forth in §748.15(e) of the EAR. Describe the system that is in place to ensure compliance with the VEU end-user requirements.
  - (7) Include an original statement on letterhead of the prospective validated end-user, signed and dated by a person who has authority to legally bind the prospective validated end-user, certifying that the end-user will comply with all VEU requirements. This statement must include acknowledgement that the prospective end-user:
    - (i) Has been informed of and understands that the item(s) it may receive as a validated end-user will have been exported in accordance with the EAR and that use or diversion of such items contrary to the EAR is prohibited;

- (ii) Understands and will abide by all authorization VEU end-use restrictions, including the requirement that items received under authorization VEU will only be used for civil end-uses and may not be used for any activities described in part 744 of the EAR;
- (iii) Will comply with VEU recordkeeping requirements; and
- (iv) Agrees to allow on-site reviews by U.S. Government officials to verify the end-user's compliance with the conditions of the VEU authorization.

**Question: Who is eligible for VEU authorization?**

**Answer:**

- Any end user in the PRC may apply to use Validated End-User authorization. All applications will be considered on the merits.
- Subsidiaries of U.S. or foreign companies in the PRC, as well as Chinese companies, may apply to receive products that might otherwise need an individual license.
- End users must demonstrate a record of using sensitive, U.S.-origin commodities, software or technology responsibly and must only be involved in civilian activities.

**Question: How will the Commerce Department evaluate VEU applicants?**

**Answer:**

- In evaluating an end-user for eligibility under authorization VEU, BIS, in consultation with the Departments of State, Energy, and Defense and other agencies, as appropriate, will consider a range of information, including the entity's record of exclusive engagement in civil end-use activities; the entity's compliance with U.S. export controls; the need for an on-site review prior to approval; the entity's capability of complying with the requirements of authorization VEU; the entity's agreement to on-site reviews to ensure adherence to the conditions of the VEU authorization by representatives of the U. S. Government; and the entity's relationships with U.S. and foreign companies.
- In addition, when evaluating the eligibility of an end-user, agencies will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.
- Agencies will formally evaluate VEU candidates through the End-User Review Committee, as specified in Supplement No. 9 to part 748.

*End-User Review Committee*

The End-User Review Committee (ERC), composed of representatives of the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for

determining whether to add to, to remove from, or otherwise amend the list of validated end-users and associated eligible items, which will be published in Supplement No. 7 to part 748.

- The Department of Commerce chairs the End-User Review Committee (ERC).
- Unanimous vote of the Committee is required to authorize VEU status for a candidate or to add any eligible items to a pre-existing authorization. Majority vote of the Committee is required to remove VEU authorization or to remove eligible items from a pre-existing authorization.
- The ERC will accept requests for VEU authorization from exporters, reexporters or end-users that are submitted in accordance with section 748.15. The ERC will also consider candidates for VEU authorization that are identified by the U.S. Government. When the U.S. Government identifies a candidate for VEU authorization, relevant parties (i.e., end-users and exporters or reexporters, when they can be identified) will be notified, before the ERC determines whether VEU authorization is appropriate, as to which end-users have been so-identified. End-users are not obligated to accept the Government's nomination.
- The ERC will make determinations whether to grant VEU authorization to each VEU candidate no later than 30 calendar days after the candidate's complete application is circulated to all ERC agencies. The Committee may request additional information from the candidate or appropriate representative related to a particular VEU candidate's application. The period during which the ERC is waiting for additional information from a candidate or appropriate representative is not included in calculating the 30 calendar day deadline for the ERC determination.
- If an ERC agency is not satisfied with the decision of the ERC, that agency may escalate the matter to the Advisory Committee on Export Policy (ACEP). The procedures and time frame for escalating any such matters are the same as those specified for license applications in Executive Order 12981, as amended by Executive Orders 13020, 13026 and 13117, and referenced in section 750.4 of the EAR.
- The Deputy Assistant Secretary of Commerce for Export Administration will communicate the determination on each VEU request to the requesting party and the end-user.

**Question: Are there specific items or end uses that will not be eligible for VEU authorization?**

**Answer:**

- *Item restrictions.* Items controlled under the EAR for missile technology (MT) and crime control (CC) reasons may not be exported or reexported under this authorization.
- *End-use restrictions.* Items obtained under authorization VEU may be used only for civil end-uses and may not be used for any activities described in part 744 of the EAR. Exports, reexports, or transfers made under authorization VEU may only be made to an end-user listed in Supplement No. 7 to part 748 if the items will be consigned to and for use by the validated end-user.

- Eligible end-users who obtain items under VEU may only:
  - (1) Use such items at the end-user's own facility located in an eligible destination or at a facility located in an eligible destination over which the end-user demonstrates effective control;
  - (2) Consume such items during use; or
  - (3) Transfer or reexport such items only as authorized by BIS.

**Question: Will Commerce extend VEU authorization to other countries?**

**Answer:**

- In this final rule, only the PRC is made eligible for VEU authorization. However, Commerce plans to extend VEU authorization to India.

**Question: What are the consequences if a company is denied VEU authorization?**

**Answer:**

- If VEU authorization is denied to an end-user, no new license requirement is triggered. In addition, being denied VEU authorization will not impact a company's future ability to receive export licenses from the Commerce Department. Those end-users who are not validated end-users will have to apply for individual export licenses under the current licensing system.

**Question: Will companies that have Special Comprehensive Licenses (SCL) receive automatic VEU authorization?**

**Answer:**

- No. The VEU authorization process is completely separate from the SCL process.
- Because SCLs are provided to exporters and VEU status is provided to eligible customers in eligible countries, BIS believes that it is important to maintain different procedures and criteria for VEU authorization and SCLs.

**Question: Will VEU also allow the release of technology (i.e. deemed export) to PRC nationals in the United States?**

**Answer:**

- If a validated end-user is approved to receive specific eligible technology under the VEU authorization, then its Chinese employees are also authorized to receive the same technology, including through a transfer inside the United States.

## **MOFCOM End Use Certificates**

**Question: Will exporters be required to obtain additional Ministry of Commerce (MOFCOM) end use certificates under the new rule?**

**Answer:**

- To conform with nomenclature that is recognized by MOFCOM, BIS is amending the EAR to label documents previously described as PRC End-User Certificates as End-User Statements (EUSs). This is in response to commenters' requests that BIS increase its coordination and cooperation with MOFCOM regarding EUSs.
- This final rule, in section 748.10(b)(4), increases the threshold at which an EUS will be required from \$5,000 to \$50,000.
- The new \$50,000 threshold, however, will not apply to items controlled under ECCN 6A003 as BIS believes there is a continued national need to require EUSs to conduct end-use checks on these sensitive commodities.
- Exporters and reexporters to the PRC have obtained between 500 and 600 EUSs each year. BIS selected the \$50,000 threshold so that the number of EUSs obtained would remain approximately the same, thereby addressing commenters' concerns regarding the burden of obtaining an increased number of EUSs and the burden on MOFCOM of processing an increased number of requests for EUSs.
- While some exporters (those that export items controlled for reasons other than national security, especially in the chemical sector) will face a new requirement to obtain EUSs, other exporters (those exporting items controlled for reasons of national security valued under \$50,000) will have a reduced burden.

## **Other Issues**

**Question: Will BIS open the China Policy Rule to further comment?**

- No, this rule is now final.
- However, BIS accepts comments on an ongoing basis, as noted in the ADDRESSES section of this Action. BIS is always considering how to improve the EAR, and will consider any such comments received as it goes forward with VEU authorization.

**Question: Has this final regulation been deemed a “major rule” by the Office of Management and Budget.**

**Answer:**

- The Office of Management and Budget has determined that the China Policy Rule is not a “major rule.” BIS's economic impact analysis for this final rule shows that the overall

annual impact will not be more than about several million dollars, which is well below than the \$100 million threshold provided in the Congressional Review Act.